Central Law Journal.

ST. LOUIS, MO., OCTOBER 19, 1917.

ENJOINING RESIDENTS FROM SUING IN ANOTHER STATE WHERE RULE AS TO SUFFICIENCY OF PROOF DIFFERS FROM THAT OF THE STATE OF DOMICILE.

It is well established that a State may enjoin its own citizens from suing in a foreign state, where "the purpose or necessary effect of such action is to obtain an advantage to which the plaintiff therein is not entitled in the domicile of the parties." Note by Judge A. C. Freeman to Eingartner v. Illinois Steel Co., 59 Am. St. Rep. 869, 880. This is a very broad statement of a rule formulated by Judge Story, as to the general power of a Court of Equity and approved in Cole v. Cunningham, 133 U. S. 107, 118.

In a recent case, decided by the Supreme Court of Alabama, exception to it was claimed to lie in the fact, that the difference between the court of domicile and that of the courts of a foreign state, whereby advantage would be gained by the plaintiff, was in the differing rules of their procedure. Weaver v. Alabama G. A. R. Co., 76 So. 364.

In 85 Cent. L. J. 259 there was considered a case of refusal by a Federal Court to apply State decision in a case on all fours with the facts of this case, but it was not deemed necessary to treat the question there, but the ruling was thought by us not to come within the principle announced in Burgess v. Seligman, 107 U. S. 20, and often subsequently reaffirmed, one of the very last cases in the court deciding that case showing clearly the limitations placed on such principle. Sim v. Edenborn, 242 U. S. 131.

Recurring to the Alabama case, it appears, that respondent, Weaver, brought suit in Georgia against complainant for damages arising out of an accident at a railroad crossing. Its bill averred that resort to the Georgia court was by defendant so as to avoid complainant's defense that there was negligence *per se* under Alabama decision, when according to Georgia ruling that negligence, under the facts, that would be shown in evidence, would not constitute an absolute bar, but would make the question one of fact for the jury to determine.

The Court said: "Counsel for respondent * * * insist that the difference is not one of substantive law, but only of procedure; that it is, in short, a difference merely in the rules of evidence and the sufficiency of proof, as to which this court, in harmony with the authorities generally, has held that the *lex fori* should always control. * * * This rule is sound enough, so far as the course of the trial court is concerned, but it does not go to the root of the present question."

The Alabama court thought the question went deeper. "So far as the courts of Georgia are concerned, it may be conceded that the plaintiff's conduct, whatever it may be, since it is merely some evidence to be considered by the jury in applying the standard of due care at their own discretion, does involve only a matter of evidence. But in Alabama, the particular conduct here at issue is not merely evidence tending to prove a conclusion, but it is *per se* a defense to the suit. When the law declares that such conduct conclusively establishes the defense of contributory negligence, it withdraws the issue from the field of evidence and creates a rule of substantive law. * * * In the case before us, it is clear that by resorting to the Georgia court for the enforcement of his alleged claim against complainant, respondent seeks an adjudication thereof un-

der a theory of law, which denies to complainant the benefit of a perfectly legal defense, which would be available to him in Alabama courts, a result which is offensive to justice and equity."

This reasoning proceeds on the theory, that Georgia courts would apply the *lex fori*, because there would be involved a rule of evidence and not a rule of substantive law. The presumption ought to be that it would not do this, as the Alabama court thinks the question is one of substantive law. The case does not refer to any Georgia case, where it had been held that the *lex fori* had been applied in any such case, but only that Georgia courts had held generally that there was such ruling as instances a difference between them and Alabama courts on this subject. It is then upon the purpose of respondent to evade the Alabama rule that the injunction must be sustained, if at all.

It does seem clear, however, that the difference between the courts of the two states is as the Alabama court states. More properly a rule of evidence is that pertaining to the admissibility and not the value of evidence. The Georgia court, no doubt, admits that there are cases where upon proof of facts alone a court may direct a verdict, yet it may not do so in this kind of a case. It is, as Judge Bleckley said, because "the court cannot point out to the jury specifically the ways of the prudent, the law supposing those ways are better known to the jury than the judge." R. & D. R. R. Co. v. Howard, 79 Ga. 44. It is not a rule of evidence that makes this so, if it is so, but it is the application to legal policy of a fact in human experience.

While possibly, it might be true that a question of this kind may involve merely a rule of evidence, yet it seems to us that the reasoning of the Alabama court shows that this is not universally, or, perhaps, even generally the case.

NOTES OF IMPORTANT DECISIONS.

DEATH—NEGLIGENCE BY BENEFICIARY BARRING RECOVERY.—In Crevelli v. Chicago, M. & St. P. Ry. Co., 167 Pac. 66, decided by Supreme Court of Washington, the facts show, that father and mother being given the right to sue for death of their son, the former misrepresented his age to defendant on his being employed. The court said: "The controlling question is whether the negligence of the father—the fraud and misrepresentation as to the age of the boy—may be urged as a defense."

There is quoted from Mich. Cent. R. R. v. Vreeland, 227 U. S. 59, 68, a statement to the effect that in a survivorship statute such an action "is independent of any cause of action which the decedent had, and includes no damages which he might have recovered, for his injury, if he had survived. It is one beyond that which the decedent had, one proceeding upon altogether different principles."

This principle is used to distinguish cases in which suit by certain named beneficiaries from those in which right of action is given to the estate of deceased. It may be, that this distinction is permissible, but it seems to us that, even where the recovery is for decedent's estate, there ought to be defenses permissible that could not be urged against decedent, but there is much authority to the contrary.

Take the case before the court, and it was allowed to set up the misrepresentation against the father, because his wrong brought about or was contributory to the death of his son. If he was to share in the estate it would *pro tanto* be an action for him as beneficiary. And if he had control over the son, he was the *alter ego* of everybody interested in his estate as to such a representation.

This, however, is not agreed to by the instant case, but recovery being denied to the father, this operated for another reason to prevent recovery by the mother. This other reason was the community law of Washington. The court said: "Inasmuch as the damages recovered for the benefit of the wife under the statute and decisions of this court would be community property, belonging half to the father, who is guilty of contributory negligence, and under his sole control and disposition, there is no way of allowing the mother a recovery in this case, without allowing the father to profit by his own wrong."

It seems to us, that it would have been better to say the recovery was to be deemed outside of what came to her as community property, just as where such a system exists in-

heritance to a particular spouse constitutes his or her separate property. By giving both, in a separate way, a right of action, this implies it is to be his or her separate property. But the principle above noted by us would, if applied, have cut her out along with her husband.

MARRIAGE — AGREEMENT BY ONE SPOUSE TO PAY THE OTHER MONEY FOR ACTS GIVING GROUND FOR DIVORCE.—In Bowden v. Bowden, 167 Pac. 154, it is held by Supreme Court of California, that an agreement by a husband in consideration of his wife dismissing her suit for divorce, that he would pay her $3,000 "should he at any time in the future cruelly treat, abandon, desert or cease to live with" her, or "commit any act giving her cause for divorce," was a valid contract and based on a good consideration.

The court concedes that the authorities go to show that an antenuptial agreement to such effect is without consideration, but says this is upon the theory that the relationship on which the parties are about to enter presumes that he will do nothing that such a contract provides against.

Where, however, there is resumption of a relation that has been violated, the consideration is in "re-establishment of the family and to make better provision for the wife's support" in case there is repetition of a prior offense.

Speaking of the case at bar, the court said: "What the contract does is to reserve to the wife without impairment all of her marital rights, to waive upon the part of neither their legal or equitable rights for any wrong which either might commit against the marriage status, but simply to impose upon the husband the duty, in addition to that which the law imposes, of observing his marital vows and obligations, or, failing to do so, to pay to the mistreated wife something in addition to that which the law would award to her in her action based on such mistreatment, either for divorce or for separate maintenance."

We fail in this to distinguish the case from a case of antenuptial contract. If he mistreats her, he violates her marital rights and for that her right is to demand full satisfaction at law. Can she, if full satisfaction is claimed and awarded, be said to have given anything as consideration for the promise by the husband?

Furthermore, if she is to get something in addition to this full satisfaction which the law awards, is not the agreement contrary to public policy, in that she is encouraged to bring about a divorce in the future? It cannot be said the resumption of the relation constitutes the consideration. That is but the inducement to the promise being made. Though it be a moving cause, it cannot be the predicate for an illegal contract. The right way, we think, to look at this contract is its effect on the continued status, and, if it is contrary to public policy in an antenuptial contract, how may that be distinguished in one providing for a resumption of marital relations after a break? The court cites in support of its view, Terkelsen v. Petersen, 216 Mass. 531, 104 N. E. 351; Duffy v. White, 115 Mich. 264, 73 N. W. 363; Hite v. Hite, 136 Ky. 529, 124 S. W. 815. This last case bases consideration on reconciliation by saying: "A contract for the re-establishment of a ruined home is one which equity is swift to approve." This is true, but it ought not to approve of what will stand as an inducement to ruin the re-established home. If the contract provides for an unconditional settlement or payment in re-establishment of the ruined home, that would be another thing.

COURTS—OVERTURNING PRIOR DECISION BY MINORITY OF A COURT.—The Supreme Court of Missouri, sitting in Division No. 2, composed of four of the seven judges of the court, by a vote of two judges, in which a third "concurs in result," and one judge dissents, undertakes to declare that a rule consistently adhered to by the court "should no longer be recognized as in existence." Claxton v. Pool, 197 S. W. 349.

This case is referred to as concrete illustration of a defect in organization, which operates against certainty in the creation of binding precedents emanating from a tribunal that should settle the law of a state.

Under Missouri system, its Supreme Court sits *en banc* with its full force of seven judges and in Division 1 and Division 2, respectively composed of three and four of these judges.

In the instant case it was ruled, that a husband is not, because of "the spirit and general trend of legisaltion" responsible for the torts of his wife, this spirit and trend being exemplified in the Married Woman's Acts. But notwithstanding the existence in Missouri for many years of an act of this character, in many cases its Supreme Court has held that the common law rule of "the personal vassalage" of the wife to her husband survived that act.

We have no quarrel with the ruling in the instant case. It ought long ago to have been declared that the common law as to this was unsuited to our condition and opposed to the principle underlying Married Woman's Acts, but we do think that, if a court has committed its-

self the other way for a long period of time, it ought to take more than a minority of the judges thereof to set that rule aside. At least a majority *en banc* would seem necessary.

Let us ask what respect has the new ruling? Would the other division of the court feel bound by it? Or would the court sitting *en banc* feel obliged to respect it, notwithstanding a majority should believe it wrong? Or that the doctrine *stare decisis* has not been efficiently displaced? And how is the Missouri bar able to say how in the very court itself this latest pronouncement will be regarded? Suppose that the uniform ruling by this tribunal had been in regard to something amounting to a rule of property, could a minority, sitting in Division, displace it? If so, contracts entered into would become very uncertain as to fluctuation in judicial decision.

EASEMENTS OF NECESSITY

Cases have frequently reached courts of last resort of our various states wherein the owner of two adjoining estates, subjects one of such estates to a right of way in favor of the other of the estates, and subsequently conveys the quasi-dominant estate, without any reference to such right of way, retaining the quasi-servient estate, and the question has arisen whether or not such easement in favor of the dominant estate continued to exist, after the severance of the estate. Courts have uniformly held that the dominant estate, under such circumstances, has an easement appurtenant to it over the servient estate, when no other way exists whereby the owner of such dominant estate can reach a public highway:[1] and this rule obtains although the dominant estate may not be surrounded by the servient estate, but is partly bounded by the lands of strangers.

The reason of the rule is that the grantor, conveying such lands, is presumed to intend to grant an estate of practical value and to grant those rights necessary for the beneficial use and enjoyment of the premises.[2]

A more serious question arises, however, when the owner of two heritages, one of which has been subjected to an easement in favor of the other, grants, by warranty deed, that part of his estate which has been subjected to the easement, the quasi-servient estate, and retains the quasi-dominant estate. Under such circumstances, when no other right of way to and from a public highway to the lands conveyed by the grantor exists, does a right of way by necessity over the lands granted exist appurtenant to the lands reserved by the grantor?

It is generally held that one conveying lands by warranty deed, without limitation or exception, covenants that no encumbrances of any kind exist upon such lands; and courts further hold that, if a private right of way exists over such lands, such covenant against encumbrances is broken.[3]

One conveying lands by warranty deed, therefore, warrants that no private ways exist thereon. It would appear, therefore, on theory, that the grantor retaining the so-called dominant estate, having warranted that the lands conveyed were clear of encumbrances, an easement over such lands in favor of the dominant estate, retained by the grantor, would not exist; and a grantor, under such circumstances, should be estopped to affirm the existence of an easement over the lands granted.

The doctrine of the intention of the parties, as applied in those cases wherein the grantor conveyed the quasi-dominant estate, and retained the quasi-servient estate, cannot be applied in this case as the inten-

(1) Gilfoy v. Randall, 274 Ill. 128; Bass v. Edwards, 126 Mass. 445; Whitehouse v. Cummings, 83 Me. 91; Pleas v. Thomas, 75 Miss. 495; Smyles v. Hastings, 22 N. Y. 217; Brown v. Kemp, 46 Ore. 517.

(2) Morrison v. Marquardt, 24 Ia. 35; Evans v. Dana, 7 R. I. 306.

(3) Butt v. Riffe, 78 Ky. 352; Hubbard v. Norton, 10 Conn. 423; Hyck v. Andrews, 113 N. Y. 81; Penn v. Schmisseur, 77 Ill. App. 526; Young v. Gower, 88 Ill. App. 70; Sherwood v. Johnson, 28 Ind. App. 277; Rawle on Covenants for Title, 5th Ed., Sec. 79.

tion of the grantor in the instant case is best indicated by the warranty contained in his deed.

A number of cases have held that such a grantor cannot derogate from his grant, and that an easement of necessity is not impliedly reserved in favor of the quasi dominant estate retained by the grantor.[4] And the only exception noted is that such an easement does exist, if the estate would be rendered valueless without it.

What appears to be the law of a majority of jurisdictions in which such cases have arisen, however, is that a way by necessity exists by implication, whether or not the servient estate entirely surrounds the dominant and regardless of whether such way is strictly necessary.[5]

In many of the cases holding this doctrine, it is based on the theory that if the easement is of such a nature as to be apparent to the ordinary observation of a purchaser, such purchaser is presumed to have purchased with notice of the easement and is estopped to deny the existence of it;[6] and this doctrine has been extended to buildings using a common stairway.[7] This doctrine, it would appear, is an entire departure from the rule of easement of necessity and the reasons underlying that rule. It disregards the covenants of the grantor and nullifies the warranty contained in the warranty deed, and, in so far as an easement of this nature is concerned, it, in substance, applies the doctrine of "caveat emptor" to the grantee.[8]

It would appear that the rule of easement of necessity as originally applied, has, in many jurisdictions, developed into a rule of easement of convenience, and the extent to which courts have at times gone in the application of this doctrine of easement of necessity is well illustrated by the case of Martin v. Murphy.[9] In that case, Martin was the owner of a corner lot fronting upon two streets, and facing east. Murphy owned a lot adjoining Martin's lot on the south and having a street frontage on the east. There was no alley touching either of the lots. Both of the lots were formerly owned by one Briggs, who had built a sidewalk the entire length of both lots on the western and rear edge thereof, and for many years, the occupants of the lot owned by Murphy, situated on the south, used this walk across Martin's lot for the purpose of hauling ashes, garbage, etc. to the street contiguous to Martin's lot on the north. In the conveyances of these lots to Martin and Murphy, no reference was made to the passageway. Martin finally obstructed the passageway and Murphy filed a bill in equity to establish an easement across the premises of Martin. The Supreme Court of Illinois held that an easement existed over Martin's lot and appurtenant to Murphy's lot on the sole ground that when Martin bought the lot owned by him, he had notice of the easement and was estopped thereafter to deny its existence. There is very little of the element of necessity involved in this case, as both of the lots involved had frontage upon a public street on the east, and it appears to establish a doctrine of easement of convenience, solely, rather an easement of necessity.

There is no logical reason for applying the rule that an easement of necessity ex-

(4) Walker v. Clifford, 128 Ala. 67; Meredith v. Frank, 56 Ohio State 479; Covell v. Bright, 157 Mich. 419; Toothe v. Bryce, 50 N. J. Eq. 589; Shoemaker v. Shoemaker, 11 Abb. (N. C.) 80; Sloat v. McDougall, 30 N. Y. (S. R.) 912.

(5) Brigham v. Smith, 4 Gray 297, 64 Am. Dec. 76; Collins v. Prentice, 15 Conn. 39, 38 Am. Dec. 61; Lawton v. Rivers, 2 McCord 445, 13 Am. Dec. 741; Rollo v. Nelson, 34 Utah 116; Zell v. First Universalist Society, 119 Pa. 390; Manbeck v. Jones, 190 Pa. 170; Steinke v. Bentley, 6 Ind. App. 663; Moore v. White, 124 N. W. (Mich.) 62; Willey v. Thiving, 68 Vt. 128; Ewen v. Baker, 98 Ill. App. 271.

(6) Rollo v. Nelson, 34 Utah 116; Ewen v. Baker, 98 Ill. App. 271.

(7) Ingals v. Plamondon, 75 Ill. 118.

(8) Powers v. Heffernan, 233 Ill. 597; Ingals v. Plamondon, Supra; Lampman v. Milks, 21 N. Y. 505.

(9) 221 Ill. 632.

ists in favor of a dominant estate when one party owned two estates, one a quasi-dominant, the other a quasi-servient estate, and conveyed the latter by warranty deed without reservation. If he intended, in such a case, to reserve an easement, a reservation should have been contained in the deed. It is a violation of the rights of the grantee in such a deed to hold that, although he obtained a conveyance of lands warranted free of encumbrances, yet an encumbrance in the nature of a right of way by necessity exists, and appurtenant to the lands owned by his grantor. A grantor, in such a case, should be held strictly to the covenants contained in his deed, only in that manner can the warranties contained in deeds be preserved.

The only exception which should be made to this rule, is the one already noted, as recognized by a few courts, and that is, that when the lands granted—the servient estate—surround those retained by the grantor—the dominant estate—an easement of necessity exists. If the dominant estate has no possible outlet excepting by a way of necessity over the servient estate, then the doctrine that a right of way exists by implication, or of necessity, notwithstanding the covenants in a warranty deed, should govern, and its basis should be public policy; the purpose of which would be to prevent estates from being rendered valueless for the want of a way of ingress and egress. If the power to determine whether certain lands shall or shall not have ingress and egress; shall be valuable or valueless, rests entirely in one adjoining land owner, many occasions might arise wherein such estate would be rendered valueless. The likelihood of a contingency of that nature happening is far more remote when the lands have a possible outlet over two or more adjoining estates.

Under such circumstances, when the dominant estate is entirely surrounded by the servient, a true situation arises for the application of the doctrine of a way by necessity; but where the dominant estate is not entirely surrounded by the servient, the logical doctrine to be applied would seem to be that the grantor, by conveying the premises by warranty deed, conveys such premises free and clear of all easements.

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PASSENGERS ON WRONG TRAINS —CARRIER'S DUTY TO PREVENT AND RECTIFY MISTAKES.

In spite of the most painstaking care on the part of the railroads, great numbers of passengers board the wrong trains. Inconvenience and annoyance necessarily result from every incident of this kind. No matter how blameless the railroad may be, and no matter how gross may be the carelessness of the passenger, in many, if not most, cases of this nature the passenger will be found attempting to secure damages at the hands of the railroad. As a result, the courts are being constantly called on to declare under what circumstances a carrier is liable on account of a passenger or intending passenger boarding the wrong train and what duty the carrier owes the traveler to rectify or relieve the situation after he has gotten aboard such train.

Carrier's Duty in Reference to Prevention of Mistakes in Boarding Trains.—It is, of course, elementary that it is the duty of the appropriate agents of the carrier to furnish travelers correct information as to the destination, movements and regulations of trains, upon proper application therefor. Ticket-sellers, gate-keepers and trainmen are charged with the duty of giving information and directions on the request of passengers. The passenger has the right to rely upon such information, and the carrier will be liable for damages proxi-

mately resulting from misdirections on the part of such employes.[1]

"When a railroad company authorizes an agent to sell tickets over its line, such agent has authority, and it is his duty, upon application made to him, to furnish information to persons desiring to purchase tickets over the road he represents as to the proper trains upon which to travel, and whether such train will stop at the station to which the ticket is sold, and other like information regarding the use of the ticket."[2]

But the carrier is not responsible for the consequences of following the instructions of its employes, unless such instructions are acted upon seasonably. A railroad will not be bound by statements of a ticket agent made several weeks before the ticket is bought and not referred to at the time of the purchase.[3]

While a carrier is responsible for misinformation given by its agents, it is not liable where the passenger boards the wrong train without receiving information or directions from any employe of the railroad. No affirmative duty rests upon the railroad to see to it that passengers take the proper trains. The duty of action in this respect rests upon the passenger and not the carrier. Unless already advised, it is the duty of the passenger in every instance to inform himself by proper inquiry as to the route, destination and stopping places of the train he boards. If he chooses, without making inquiry of the railroad employes, to board a train, and finds himself upon the wrong train, he has only himself to blame and cannot hold the railroad responsible for failing to restrain him from making this mistake.[4]

"It is the duty of a person about to take passage on a railroad train to inform himself when, where and how he can go or stop, according to the regulations of the railroad company; and if he makes a mistake not induced by the company, against which ordinary care in this respect would have protected him, he has no remedy against the company for the consequences."[5]

"It is the duty of the intending passenger to find out what route he should take by inquiry and it is not the duty of the railroad company to bring home notice to such intending passenger, otherwise than in answer to inquiry."[6]

"It is the duty of one about to take passage on cars to learn and ascertain for himself whether the rules of the carrier will permit a stop at a particular point where he may desire to get off."[7]

What is the result where a flagman is charged, under the rules of the company, with the duty of standing at the steps and

(1) New York, L. E. & W. R. v. Winter, 143 U. S. 60; Burnham v. Grand Trunk R., 63 Me. 302, 18 A. R. 220; Central R. & Bkg. Co. v. Roberts, 91 Ga. 513, 18 S. E. 315; Alabama G. S. R. Co. v. Heddleston, 82 Ala. 218, 3 So. 53; Lake Shore & M. S. R. v. Pierce, 47 Mich. 277, 11 N. W. 157; Gulf, C. & S. F. R. v. Moorman (Texas Civ. App.), 46 S. W. 662; Texas & P. R. Co. v. Armstrong, 93 Tex. 31, 51 S. W. 835; Illinois C. R. v. Harper, 83 Miss. 560, 64 L. R. A. 283; Kansas City, F. S. & M. R. v. Little, 66 Kans. 378, 61 L. R. A. 223; Church v. Chicago, M. & S. P. R., 6 S. D. 235, 26 L. R. A. 616; Robertson v. Louisville & N. R., 142 Ala. 216, 37 So. 831; Sira v. Wabash R. R., 115 Mo. 127, 37 A. S. R. 386.

(2) St. Louis, S. W. R. v. White (Texas), 89 S. W. 746, 2 L. R. A. (N. S.) 110.

(3) Atchison, T. & S. F. R. v. Cameron, 66 Fed. 709.

(4) Beauchamp v. International & G. N. R. Co., 56 Tex. 239, 9 A. & E. R. R. C. 307; Missouri, K. & T. R. Co. v. Dawson, 29 S. W. 1106; Texas & P. R. R. Co. v. Ludlaw, 57 Fed. 481; Atchison, T. & S. F. R. Co. v. Gants, 38 Kans. 608, 5 A. S. R. 780; Wills v. Alabama, G. S. R. Co., 67 Miss. 24, 6 So. 738; Deitrich v. Pennsylvania R. Co., 71 Pa. St. 432, 10 A. R. 711; Pittsburgh, C. & S. L. R. Co. v. Nuzum, 50 Ind. 141, 19 A. R. 703; Platt v. Chicago & N. W. R. Co., 63 Wis. 511, 23 N. W. 412; Chicago, St. L. & P. R. Co. v. Bills, 104 Ind. 13, 3 N. E. 611; Noble v. Atchison, T. & S. F. R. Co., 40 Okla. 534, 46 Pac. 483; Illinois C. R. Co. v. Harper, 83 Miss. 560, 64 L. R. A. 283; Boehm v. Duluth, S. S. & A. R. Co. (Wis.), 65 N. W. 506; Church v. Chicago, M. & S. P. R. Co., 6 S. D. 619, 26 L. R. A. 616; Hall v. Memphis & C. R. Co., 15 Fed. 65; Evansville & T. H. R. Co. v. Wilson, 20 Ind. App. 5, 50 N. E. 90; St. Louis, K. C. & M. R. Co. v. Marshall, 78 N. W. 610, 18 A. & E. R. R. C. 248; Pittsburgh, C. C. & S. L. R. Co. v. Lightcap, 7 Ind. App. 249, 34 N. E. 243; Albin v. Gulf, C. & S. F. R. Co. (Texas), 95 S. W. 589; Baltimore & Ohio R. Co. v. Norris, 17 Ind. App. 189, 60 A. S. R. 166; Louisville & N. R. Co. v. Maxwell, 192 Ala. 47.

(5) Ohio & M. R. Co. v. Applewhite, 52 Ind. 540.

(6) Illinois C. R. Co. v. Harper, 83 Miss. 560, 64 L. R. A. 283.

(7) Conners v. Citizens' St. R. Co., 146 Ind. 430, 45 N. E. 662.

refusing admittance to passengers who do not exhibit proper tickets for that train? Has a passenger who gets on the wrong train a right of action, because the flagman permits him to enter without examining his ticket or inquiring his destination? To answer this question in the affirmative is to do violence to the established principle that the only duty resting upon the carrier is not to misdirect the passenger when information is applied for and that it is the duty of the passenger to find out by inquiry the destination of the train he takes.

The flagman has a right to assume that the passenger knows the destination of the train; the passenger has no right to assume that the flagman knows the destination desired by the passenger. Upon what principle can it be said that the flagman is at fault in failing to inquire of the passenger, while the passenger is blameless in failing to inquire of the flagman? How can a passenger in full possession of his faculties ground an action at law on the failure of a flagman to stop him and ask him whether he has taken the common-sense precaution to find out where the train he boards is bound for?

It is true that the flagman in failing to inquire the destination of the passenger has breached a duty he owes to his employer, but he has thereby violated no duty which the carrier owes to the passenger. The carrier's regulations requiring the flagman to prevent entry of passengers without proper tickets, like the rule of a theater requiring its ticket-taker to refuse entry to persons without tickets is established for the purpose of protecting the company against the intrusion of unauthorized persons, and not for the purpose of protecting the person from his own mistake. Passengers are not entitled to recover on account of the failure of railroad employes to obey rules established solely for the protection of the carrier.[8] "Mere pretermission of self-imposed precaution does not constitute actionable negligence."[9]

"The mere fact that a railroad receives a passenger on a train without protest, and that the passenger does not know that the train does not stop at the station for which he holds a ticket, does not entitle the passenger to damages, but he must also show that he exercised ordinary care to ascertain that the train was the proper train."[10]

"Neither was the brakeman bound to know or ascertain what her destination was, unless inquiry was made of him by her in reference thereto. The brakeman or other employe of the company, in the absence of notice to the contrary, had a right to assume, when she walked out on the platform in a manner indicating her intention to leave the train, that she had reached her destination."[11]

"Averments that a carrier's servants carelessly and negligently caused a passenger to enter a train for which she had a ticket given her by mistake, without averment of their knowledge that she did not desire to take passage on the train indicated by the ticket she held, did not constitute a cause of action against the carrier."[12]

What Duty Does Carrier Owe Passenger Discovered on Wrong Train.—By the decided preponderance of authority, if a passenger boards a train not scheduled to stop at the passenger's destination, even though the mistake was due to misdirection on the part of the carrier's employes, and even though the train passes through such point of destination, it is not the duty of the carrier to stop at such point and let him off. The carrier owes the public a duty to maintain its regular schedules and to operate its trains in a safe and orderly way, and this duty is paramount to any consideration of the convenience of the individual passenger.

Upon discovering on his train a passenger who desires to alight at an unscheduled

(8) Cent. of Ga. R. Co. v. Carlisle, 2 Ala. App. 518; Barney v. Hannibal & St. J. Ry. Co., 126 Mo. 392, 26 L. R. A. 847.

(9) Skelton v. London & Northwestern Railroad, L. R. 2 C. P. 636.

(10) St. Louis S. W. R. Co. v. Campbell, 39 Tex. C. A. 35. 69 S. W. 451.

(11) Louisville N. A. & C. R. Co. v. Cook, 12 Ind. App. 109, 38 N. E. 1104.

(12) Scott v. Cleveland, C. C. & S. L. R. Co., 144 Ind. 125, 32 L. R. A. 154.

stop, it is not only the right but the duty of the conductor to demand of the passenger fare to some regular stop, and to eject him if such fare is not paid. If a railroad passenger had the right to demand that the train should depart from its regular schedule because he had been misdirected by an employe of the company, then on the same principle a passenger intending to take a coastwise steamer, but by mistake of the carrier's agent directed to a trans-Atlantic steamer, might demand, after the steamer was a day out of port, that it put back into port and permit him to disembark.

The passenger on the wrong train through the fault of the carrier has, of course, his remedy for all damage proximately resulting from the misdirection; but he has no right to demand that the train shall stop at an unscheduled point, and if he refuses to leave the train the conductor may rightfully eject him,[13] and he cannot ground a cause of action upon such ejection.[14]

"By his ticket a passenger acquires only the right to be carried according to the custom of the road; he has the right to go to the place which his ticket calls for on any train that usually carries passengers to that place, but he cannot insist on being carried out of the customary course of the road."[15]

"Where a railway passenger is not at fault in starting on a particular train, he has a right of action against the company for damages arising from its refusal or failure to take him to his destination as agreed through its ticket agent. But whatever his remedy, he has no right, without paying additional fare, to stay on the train after he is notified by the conductor that it will not stop there.

"The business of railroads can only be carried on safely by having regularity. If trains are arranged in a certain way, and their time fixed with regard to limited stoppages, a conductor would never be safe if he were bound at his peril to ascertain from any mere stranger the existence of an agreement by the company, to change the arrangement and stop at an unusual place.

"A passenger cannot compel a conductor to deviate from his appointed scheme, and if truly informed concerning the rule as to stoppages, he is bound to conform his own movements to it, and seek redress in some other way. Every one is bound to know that the conductor is not invested with general power to run his train as he pleases, and that so far as he is concerned trains must conform to the schedule."[16]

"If the conductor of a through train, which by the regulations of the company is permitted to stop only at a few important stations on its transit, can be required to stop his train at any way station on the statement of a passenger that he was informed by some agent of the company authorized to give such information that the train would stop at such a station, and that

(13) In connection with the text it must be borne in mind that the physical condition of the passenger, his age, etc., as well as the condition of the weather and the character of the place, must be taken into consideration by the conductor before the passenger is ejected. See Williamson v. Central, etc., R. Co. 127 Ga. 125, 56 S. E. 119; Georgia, etc., R. Co. v. Bigelow, 68 Ga. 219; Southern R. Co. v. Wood, 39 S. E. 894, 114 Ga. 140; Southern R. Co. v. Walton (Ga.), 39 S. E. 897; Louisville, etc., R. Co. v. Fleming, 82 Tenn. (14 Lea) 128; Richmond, etc., R. Co. v. Ashby, 79 Va. 130; 52 Am. Rep. 620; Tilburg v. Northern Cent. R. Co. (Pa.), 66 Atl. 846; Hays v. Houston, etc., R. Co., 46 Tex. 272; Schmitt v. Milwaukee St. R. Co., 89 Wis. 195, 61 N. W. 834; Hicks v. Hannibal, etc., R. Co., 68 Mo. 329; Jeffersonville R. Co. v. Rogers, 38 Ind. 116, 10 Am. Rep. 103; Jones v. Mobile & Ohio R. Co. (Miss.), 72 So. 1009; Mobile & Ohio R. Co. v. Dill (Ky.), 191 S. W. 80.

(14) Beauchamp v. International & G. N. R. Co., 56 Tex. 239, 9 A. & E. R. R. C. 307; Lake Shore & M. S. R. Co. v. Pierce, 47 Mich. 277, 3 A. & E. R. R. C. 340; South & N. A. R. Co. v. Huffman, 76 Ala. 492; Chicago, S. L. & P. R. Co. v. Bills, 118 Ind. 221, 20 N. E. 775; Cincinnati, H. & D. R. Co. v. Carper, 112 Ind. 26, 13 N. E. 122; Yorkton v. Milwaukee, L. S. & W. R. Co., 54 Wis. 234, 11 N. W. 482; International & G. N. R. Co. v. Gilbert, 22 A. & E. R. R. Co. 405; Atchison, T. & S. F. R. Co. v. Gants, 38 Kans. 608, 5 A. S. R. 780; International & G. N. R. Co. v. Hassell, 62 Tex. 256, 50 A. R. 525; Logan v. Hannibal & S. J. R. Co. (Mo.), 12 A. & E. R. R. C. 1411; Chicago, B. & Q. R. Co. v. Spirk, 51 Neb. 167, 70 N. W. 926; McGhee v. Reynolds, 117 Ala. 413; Sira v. Wabash R. Co., 115 Mo. 127, 37 A. S. R. 386; Louisville & N. R. Co. v. Maxwell, 192 Ala. 47; Ashe v. Southern Ry. Co. (S. C.), 89 S. E. 482.

(15) Chicago & A. R. Co. v. Randolph, 53 Ill. 511.

(16) Lake Shore & M. S. R. Co. v. Pierce, 47 Mich. 277, 3 A. & E. R. R. C. 340.

he had been directed to take that train, the movement of such train would virtually be withdrawn from the control of the company and placed under the control of the passengers and in lieu of that precision, regularity and security which should be required in the management of passenger trains, only uncertainty, irregularity and insecurity would prevail."[17]

If the carrier is not under the duty to stop at an unscheduled station for a passenger who is on the train through the carrier's fault, *a fortiori,* there is no duty to stop for a passenger who is on the wrong train through his own fault. Upon this latter proposition the courts are unanimous.[18]

A traveler who boards the wrong train through his own mistake is there without authority and has no greater rights than a person who mistakenly goes to any other place where he has no authority to be. He has not a contract entitling him to passage, nor has he been accepted as a passenger. He is not entitled to the care and protection due a passenger. It has been held, that such a traveler has no greater rights than a trespasser;[19] that the carrier does not even owe him the duty of telling him that he is on the wrong train;[20] that he cannot demand that the train stop and let him off at his destination, when the train is not scheduled to stop there, even though there is on board a superintendent with power to suspend schedules;[21] that he cannot insist that he be transported to a point not scheduled for the discharge of passengers, even though it be a place where the train has to stop on account of a railroad crossing.[22]

NIEL P. STERNE.

Anniston, Ala.

(17) St. Louis, K. C. & N. R. Co. v. Marshall, 78 Mo. 610, 18 A. & E. R. R. C. 252.

(18) Missouri, K. & T. R. Co. v. Dawson, 29 S. W. 1106; Texas & P. R. Co. v. James, 82 Tex. 306, 18 S. W. 589; Pennsylvania R. Co. v Wentz, 37 O. St. 333; Atchison, T. & S. F. R. Co. v. Gants, 38 Kans. 608, 5 A. S. R. 780; Fink v. Albany & S. R. Co., 4 Lansing, 147 (N. Y.); Ohio & M. R. Co. v. Swarthout, 67 Ind. 567; Wells v. Alabama G. S. R. Co., 67 Miss. 24, 6 So. 737; Texas & P. R. Co. v. White, 17 S. W. 419; Chicago, S. L. & P. R. Co. v. Bills, 104 Ind. 13, 3 N. E. 611; Ohio & M. R. Co. v. Applewhite, 52 Ind. 540; Louisville & N. R. Co. v. Miles, 37 S. W. 486; St. Louis, I. M. & S. R. Co. v. Lewis, 69 Ark. 81, 61 S. W. 163; Hancock v. Louisville & N. R. Co., 27 Ky. L. R. ....., 85 S. W. 210; Logan v. Hannibal & S. J. R. Co., 77 Mo. 633; New York C. & S. L. R. Co. v. Willing, 24 Ohio C. C. R. 474; England v. International & G. N. R. Co., 32 Tex. C. A. 86, 73 S. W. 24; Alabama G. S. R. Co. v. Carmichael, 90 Ala. 19.

(19) Atchison, T. & S. F. R. Co. v. Gants, 38 Kan. 608, 5 A. S. R. 780; Chicago, S. L. & P. R. Co. v. Bills, 104 Ind. 13, 3 N. E. 611.

(20) Texas & P. R. Co. v. Ludlam, 57 Fed. (C. C. A.) 481.

(21) Ohio & M. R. Co. v. Swarthout, 67 Ind. 567, 33 A. R. 104.

(22) Pittsburgh, C. C. & S. L. R. Co. v. Lightcap, 7 Ind. App. 249, 34 N. E. 243.

DAMAGES—CALCULATED TO WHAT TIME.

FREY & SON, Inc., v. CUDAHY PACKING CO.

District Court, D. Maryland. June 21, 1917.

243 Fed. 205.

In an action for damages for tortious injury, where plaintiff proved a loss of profits it would have made on resale of a commodity, had it been able to buy such commodity at the price other jobbers could obtain it from defendant, plaintiff can only recover for those damages suffered before the date of the filing of the suit, and is not entitled to recover those suffered between that time and verdict.

ROSE, District Judge. The defendant objects to the entering of the judgment upon so much of the verdict of the jury in this case as ascertained the damages suffered by plaintiff subsequent to the date of the filing of the suit. In the nature of things there is no reason why a jury should not be allowed to ascertain and award the damages suffered by plaintiff down to the time of trial, from wrongful acts of the same nature as those mentioned in the declaration. If such were the law, there would doubtless sometimes be difficulty in applying it; but, on the whole, much trouble and expense would be saved.

The general rule is to the contrary; perhaps because when it was first formulated the judges were interested in the fees paid to the chancery for the writs, and they did not care to furnish for the price of one the justice that, from their point of view, should be paid for by

the suing out of two or more. However this may be, it has long been established that the plaintiff can recover only for such damages as were the consequences of what the defendant did before suit was brought, although it is immaterial whether the effect of what was done showed itself before or after the bringing of the suit, as, for example, where the thing complained of is a tortious injury to the person or property from some particular act, the plaintiff may recover for any damage which manifests itself up to the time of the verdict. On the other hand, where the injury sued for is caused by a mere repetition or continuation of acts of the same class as that for which the suit was brought, the plaintiff's recovery is limited to the damages resulting from such of those acts as were done before the bringing of the suit. In Lawlor v. Loewe, 235 U. S. 536, 35 Sup. Ct. 170, 59 L. Ed. 341, the plaintiff was allowed to recover for the damage done to it by a secondary boycott instigated by the defendant before the bringing of the suit, although some of the injury did not manifest itself until afterwards; but the authorities cited by the Supreme Court in support of its conclusion do not justify the assumption that it intended to modify the previously recognized principles of law.

In this case the only damage proved by the plaintiff was the loss of profits it would have made on resales of Old Dutch Cleanser, if it had been able to buy Old Dutch Cleanser at the price at which other jobbers could obtain it. Such damage is a damage which occurs from day to day, and the damage on one day is not the necessary result of an act done by the defendant at an earlier date. The difference between cases in which the jury can give damages down to the date of the verdict and those in which it cannot may be illustrated thus: If the defendant had made some false and libelous statement against the plaintiff, which acquired general circulation, the damage from that false and libelous statement might well have continued long after the bringing of the suit, and long after defendant ceased to be in business at all. On the other hand, if the defendant in the case at bar had wound up its affairs the day after the suit was brought, no one would contend that plaintiff was entitled to recover damages caused by the refusal of defendant to sell its goods after that date, or to permit other persons so to do, because both the motive and the power to enforce such refusal or restraint ceased with the defendant's going out of business.

I wish the law were otherwise, but, as it is, I shall be compelled to set aside so much of the verdict as awards the plaintiff damages from the time of the institution of the suit to the verdict. Judgment in plaintiff's favor will be entered upon the balance of the verdict.

NOTE.—*Damages for Loss by Failure to Deliver Property Contracted to be Sold.*—The case of Lawlor v. Loewe, 235 U. S. 536, 35 Sup. Ct. 170, 59 L. ed. 341, seems to us not to indorse a rule of damages applicable to the question in the instant case. That case holds that damages which "were the consequence of acts done before and constituting part of the cause of action declared on may be recovered, though they accrued or manifested themselves after the action." This, of course, means up to verdict. This rule is held by the instant case not to apply to a case where the damage occurs from day to day, and the damage on one day is not the necessary result of an act done by the defendant at an earlier date. This means, as we understand the statement, that if market value is the measure of damages that measure is determined by market value up to or before the institution of suit. We do not believe that such is the rule, and we do not see that it is true that: "If the defendant * * * had wound up its affairs the day after suit was brought," it could not be contended "that plaintiff was entitled to recover damages caused by the refusal of defendant to sell its goods after that date." If defendant could be made to respond for damages which were a consequence of precedent acts, though he had wound up his business, he could be made to respond for the highest value in the market up to verdict. One damage is as much in contemplation of the parties as the other. And fixing damages at the time of bringing of the suit is more arbitrary than at the time of verdict, because that value hinges on when the suit is brought. This may be promptly or barely within the period of limitations. Damage up to verdict is arbitrary too, but it approaches justice more nearly because this extends the time. If the rendition of verdict is at a time not within the period of limitations, it may be, that the measure might be at a time between the filing of suit and the rendition of verdict.

Taking it that the goods contracted for in the instant case were such as had a market price, up to what time may the loss be computed?

It has been held that where there was a failure to deliver stock, the measure of damages is the difference between the contract price and the highest market value between the date for delivery and a reasonable time after that date in which plaintiff could purchase the stock. Vos v. Child Huswit & Co., Mich., 137 N. W. 209, 43 L. R. A. (N. S.) 368. Were plaintiff the day following the breach to bring suit, this reasonable time might take him over to a time after suit was instituted.

In McKinley v. Williams, 74 Fed. 94, 20 C. C. A. 312, the same rule is stated, the court saying: "He who deprives another of the control of property agreed to be sold ought to assume the risk of the fluctuations in its market value, until its owner, by purchase or sale, can restore himself to the condition in which he would have been if his property had not been wrongfully taken.

It rests upon the proposition that the risk of the market during this time should be assumed by the perpetrator, not by the victim of the wrong."

Gallagher v. Jones, 129 U. S. 193, 9 Sup. Ct. 335, 32 L. ed. 658, was a case where a principal ordered a broker to sell certain stocks and purchase others in their stead. Those ordered sold went down in price and those ordered bought advanced. The court, in speaking of other sales than of stocks, said: "Other goods wrongfully converted are generally supposed to have a fixed market value at which they can be replaced at any time, and, hence, with regard to them, the ordinary measure of damages is their value at the time of conversion, or, in the case of sale and purchase, at the time fixed for their delivery. But the application of this rule to stocks would be very inadequate and unjust."

As to stocks, it was said: "The rule of highest intermediate value up to the time of trial formerly prevailed in New York and may be found laid down in Romaine v. Van Allen, 26 N. Y. 309, and Markham v. Jaudon, 41 N. Y. 235, and other cases." The hardship of this rule is adverted to and was changed afterwards to be "the highest intermediate value of the stock between the time of its conversion and a reasonable time after the owner has received notice of it to enable him to replace the stock." This rule is adopted in the Gallagher case as having "the most reasons in its favor." It was said that there was hardship in "estimating the damages by the highest price up to the time of trial which might be years after the transaction occurred." It was suggested by us, *supra*, that the trial ought to occur at least within the period of limitations that suit might be brought.

It is easy to be perceived, however, that neither the time of instituting suit nor that of bringing in the verdict rests upon any but an arbitrary point of time.

In Gray v. Kemp, 88 Va. 201, 16 S. E. 225, there was an agreement to sell stock at $3.50 per share. Plaintiff sued for damages upon failure to deliver and the jury rendered a verdict for damages at the rate of "$20 per share, the value of the stock at the time of trial." The court said: "This, no matter what may be regarded as the proper rule, cannot be deemed excessive. The general rule, where there has been no unreasonable delay in the commencement and prosecution of the case, is to treat the refusal as amounting to a conversion and give as the measure of damages the value of the stock or its highest value in market at any time after demand and refusal. But in this case it is immaterial whether this be the rule or whether the rule be the value of the stock at the date of trial. In either event, the defendant has not been injured, for the proof shows that the highest intermediate value was $26, while the actual value on the day of trial was $20 per share."

The case of Gallagher v. Jones, *supra*, was cited, which ruled as we have stated. That might have shown $26 per share, or it might have shown less than $20 per share. It is to be noticed that the Gray case speaks of the general rule spoken of applying only where there has been "no unreasonable delay in the commencement and prosecution of the case."

It seems then purely arbitrary in suits regarding conversion or non-delivery of what has been contracted to be sold, to fix either the commencement of a suit or the rendering of the verdict as the time for measurement of damages. One wronged cannot lay by and allow damages to increase, but he must act with reasonable promptness to save himself from loss. C.

BOOK REVIEWS.

WILLIAMS ON JURISDICTION AND PRACTICE OF FEDERAL COURTS.

Mr. Charles P. Williams, A. B., of St. Louis Bar, presents to the profession and for advantageous use by students, a handbook of the law of Jurisdiction and Practice of Federal Courts. Mr. Williams, for the past four years, has been a professor in the law school of Washington University at St. Louis and his lectures, there delivered, supply the basis for this excellent, timely book.

The work is not theoretical, and yet is more than a mere digest of rulings, arranged in logical sequence. The reason and spirit of federal jurisprudence, as evolved and co-ordinated by our federal courts, is attempted, with great measure of success, to be exposed in this book.

The growth of this system is hard accurately to be followed. Fortunately, however, whatever plasticity there was in our federal jurisprudence, arising out of the impossibility of written law to take care efficiently of all situations in the future, was in the moulding by a master hand—our august federal Supreme Court. Mr. Williams' task, by no means an easy, and by no means an uninteresting one, was to discern the underlying principles of this intelligent moulding.

In this connection we refer particularly to Chapter XVI, Admiralty Jurisdiction. Mr. Williams, in speaking of the Judiciary Act of 1789, vesting exclusive original jurisdiction of admiralty and maritime causes in the district courts, quite clearly shows his power of analysis in considering the problem here presented. That he is almost prophetic, a case appearing in July 1st, 1917, in advance sheets of Federal Supreme Court reporter, tends to prove. The case is that of Southern Pacific Co. v. Jensen, 37 Sup. Ct. 524, and discussed in 85 Central Law Journal 57, and this chapter has added interest given to it by that decision. Other chapters might be thus alluded to, but this would seem invidious.

The entire work gives evidence of painstaking, intelligent, discriminating attention in ref-

erence to a subject, which perhaps more than any other in purely statutory law, has challenged common law and equity learning. We cannot here omit to make, at least, passing reference to the chapters on Equity Procedure.

The work is in one volume of nearly 600 pages, bound in pliable red cover and issues from the well known book house of The F. H. Thomas Law Book Co., St. Louis, 1917.

VIZETELLY'S SOLDIER'S SERVICE DICTIONARY.

A most serviceable book, edited by Prof. Frank H. Vizetelly, Litt.D., LL.D., managing editor of the "New Standard Dictionary," has just appeared. This little book is designed for use by our soldiers abroad. It contains not only translations in French of English words, but also it includes Military, Naval, Aeronautical, Aviation and Conversational Words and Phrases used by the Belgians, British and French Armies.

This work is indeed timely and many a soldier must appreciate it as a sort of pocket companion when in the trenches, cantonments and camps.

The arrangement, the typography and the binding in law buckram are all in the best style and the book reflects credit on its publishers, Funk & Wagnalls, New York and London, 1917.

BOOKS RECEIVED.

The Soldier's Service Dictionary of English and French Terms. Embracing 10,000 Military, Naval, Aeronautical, Aviation, and Conversational Words and Phrases Used by the Belgian, British and French Armies. With Their French Equivalents Carefully Pronounced, the Whole Arranged in One Alphabetical Order. Designed Especially for Instant Use in the United States Service. Edited by Frank H. Vizetelly, Litt.D., LL.D. Managing Editor of "The New Standard Dictionary," Member of the Royal Society of Arts, London. Illustrated with Topographical Symbols Used in Official Charts. Price, $1.00. Funk & Wagnalls Co. New York. 1917. Review in this issue.

HUMOR OF THE LAW.

"Is a deed good if drawn on Sunday?" "I dunno. They do say the better the day the better the deed."—Louisville Courier-Journal.

Irvin Cobb states that a marshal was taking a couple of darkies to the federal prison at Atlanta. The prisoners came from different localities and were strangers to each other. When they got settled on the train, one asked: "How long did de jedge send you down fur?" "Three year; how long you goin' down fur?" "F'um now on!"

A man sat down to write out a deed, and began with, "Know all women by these presents."

"You are wrong," said a friend; "it ought to be, 'Know all men.'"

"If all women know it, all men will surely," answered the other.—New York Times.

During his vacation a lawyer met an old friend in the village and their conversation drifted to a discussion of the natives. A young farmer came under their view.

"He's a fine looking young fellow," said the lawyer.

"Y-e-e-es," assented his friend.

"Well, anyway, he has a mighty good head."

"It ought to be good," was the reply; "That man's head is brand new—he never used it any."—Case and Comment.

Miss Helen, the daughter of the family in which jet-black Maria Jackson occasionally worked by the day, had been given a beautiful cup and saucer of rare china. She showed it to Maria and said:

"I mean to put it away in my hope box. You know what that is, Aunt Maria? It's the box a girl puts things into in the hope that she will some day need them as a bride."

"Lawzey, chile, I knows all about dem hope boxes. I got one of my own, chile."

"Why, I thought you were already married."

"I is, chile, an' my hope box is one I is puttin' money into fas' as I kin until I has enough to pay fo'a divorcement from Pete Jackson. More'n one kind of hope box mixed up with matrimony, Miss Helen."—New York Times.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn

1. **Adverse Possession**—Color of Title.—One who enters under color of title and openly and continuously uses property must be assumed to do so with intent to claim adversely to unknown heirs.—Warne v. Greenbaum, N. Y., 101 Atl. 568.

2.——Evidence.—Where party entered under color of title, and erected house and improved about 20 acres out of entire tract of 8,000 acres conveyed, and both he and true owner grazed cattle on remainder, such use was not adverse possession of any of land save that inclosed.—Montoya v. Catron, N. M., 166 Pac. 909.

3.——Payment of Taxes.—Where wife occupies her husband's land as homestead, claiming no adverse title, her payment of taxes is presumed to be payment on behalf of her husband.—Garrison v. Taff, Mo., 197 S. W. 271.

4.——Prescription.—Where, after inheriting one-fourth of premises and receiving deeds from other heirs to remaining three-fourths, N. held premises for more than 20 years under open and undisputed claim of title, ownership of plaintiff, claiming under him, was indefeasible.—Carthage Development Co. v. Cushman, N. Y., 166 N. Y. S. 483.

5.——Statute of Limitations.—The 30-year statute of limitations is statute of repose, so that disabilities will not prevent its running.—Nichols v. Hobbs, Mo., 197 S. W. 258.

6. **Agriculture**—Place of Contract.—Where farmer, by letter written in Georgia, ordered fertilizer from South Carolina from dealer in that state, and goods were shipped, and notes for price executed in Georgia and sent to South Carolina, sale is completed in South Carolina, and Georgia statutes as to branding such commodities do not apply.—Newton v. Coe-Mortimer Co., Ga., 93 S. E. 235.

7. **Associations**—Individual Profit.—Chamber of Commerce, voluntary association organized to promote common welfare, from which members derive no individual profit, is not engaged in any business, within Code Civ. Proc. § 388, providing that persons associated in business and transacting it under common name may be sued by such name.—Warman Steel Casting Co. v. Redondo Beach Chamber of Commerce, Cal., 166 Pac. 856.

8. **Attorney and Client**—Contingent Fee.—Where contract between attorney and client provides that former shall receive 50 per cent of amount of claim, whether obtained by suit or compromise, attorney cannot recover from defendant more than half the sum client sees fit to accept.—Nichols v. Orr, Colo., 166 Pac. 561.

9.——Lien.—After a client had dismissed his suit without attorney's knowledge and without receiving consideration for dismissal, attorney was not entitled to enforce a charging lien under Mills' Ann. St. 1912, § 293.—Gooding v. Lyon, Colo., 166 Pac. 564.

10.——Presumption.—That several months before attorney appeared for clients, and procuring vacation of order for their examination in supplementary proceedings, does not raise presumption that attorney is still representing clients.—McBrien v. Miller, N. Y., 166 N. Y. S. 445.

11.——Stipulation.—Attorney employed in two different suits involving same issues may, where interests of his clients are same, stipulate that trial of one suit will determine issues in other.—Bryant v. Elberton & E. Ry. Co., Ga., 93 S. E. 219.

12.——Waiver.—The corporation counsel of a city, representing it at the trial of a suit to cancel special assessments, has power to bind the city by a stipulation as to the payment of damages and waiver of assessment.—Richardson v. City of Seattle, Wash., 166 Pac. 639.

13.——Waiver.—Where an attorney directed the proceeding in his client's cause to final judgment, which made no provision for a lien upon the causes of action in favor of the attorney, any right he may have had under Comp. Laws 1907, § 135, to a lien, was waived.—Norton v. McIninch, Utah, 166 Pac. 984.

14. **Bankruptcy**—Equity.—Court of bankruptcy held not concluded by order of court of equity, which had previously appointed receivers to take over bankrupt's property, which provided for their compensation and directed turning over of property to trustee in bankruptcy.—Hume v. Myers, U. S. C. C. A., 242 Fed. 827.

15.——Final Order.—An order in bankruptcy dismissing petition for compensation filed by former receivers, who had delivered property of bankrupt to trustee, which authorized filing of another petition asserting their claims on other grounds, is not final order, and second petition cannot be denied on ground that proper remedy should have been by appeal from denial of first. Hume v. Myers, U. S. C. C. A., 242 Fed. 827.

16.——Judicial Review.—Where, pending controversy as to bank's lien on its stock for indebtedness of bankrupt firm, receiver of former firm filed answer and petition claiming ownership, held, that this raised a controversy arising in bankruptcy proceeding, reviewable by appeal. —Dalton v. Humphreys, U. S. C. C. A., 242 Fed. 777.

17.——Practice.—Claim of licensed saloonkeeper's trustee in bankruptcy to licenses held not triable in a summary proceeding, as the adverse claim of one to whom they had been assigned was not merely colorable.—In re Vocke, U. S. D. C., 242 Fed. 963.

18.——Rehearing.—Rehearing on an application for discharge, to permit the trustee to offer evidence of his authority to oppose the discharge, denied, where, although having full opportunity, he did not do so on the hearing.—In re White, U. S. D. C., 242 Fed. 1001.

19. **Banks and Banking**—Ultra Vires.—Where national bank agrees to lend money, which loan might incidentally result in keeping another bank open for business, such obligation is not ultra vires.—Murphy v. Hanna, N. D., 164 N. W. 32.

20. **Bills and Notice**—Burden of Proof.—In suit on check given as deposit on price of realty sold, plaintiff's introduction of check in evidence, and proof of nonpayment was caused by defendant's orders to bank, made prima facie case, casting burden on defendant to establish failure of consideration.—Ingalls v. Eyraud, Cal., 166 Pac. 832.

21. **Brokers**—Middleman.—Broker is simply a middleman, and may claim commissions from both parties, when he has no duty to perform but to bring them together; but if he contracts to take any part in negotiations, he cannot be regarded as mere middleman, entitled to commissions from both.—Jensen v. Bowen, N. D., 164 N. W. 4.

22. **Building and Loan Associations**—Negligence.—Director of building association was guilty of gross negligence in permitting secretary to pursue custom of calling up directors on occasion of meeting and getting their permission to note them as present when they were absent, and is bound by knowledge he would have acquired if present.—Four Corners Bldg. & Loan Ass'n v. Schwarzwaelder, N. Y., 101 Atl. 564.

23. **Cancellation of Instruments**—Restoration. —One suing to cancel contract for sale of land, and warranty deed given in pursuance thereof, must restore to other party everything of value which he has received, or offer to restore same on condition that other party shall do likewise. —Donovan v. Dickson, N. D., 164 N. W. 27.

24.——Sale and Exchange.—Where facts warrant rescission of contract for sale or exchange of land on ground of fraud, defendants cannot defeat action on ground that plaintiff had not placed them in statu quo by removing incumbrances against defendants' property, title to which never passed to plaintiff; incumbrances having been effected as part of system of fraud. —Hallam v. Bailey, Okla., 166 Pac. 874.

25. **Carriers of Goods**—Damages.—That hogs were shipped for exhibition purposes, and not immediate sale, does not affect application of ordinary rules for assessing actual damages for negligence in shipment.—Kansas City, M. & O. Ry. Co. v. Bell, Tex., 197 S. W. 322.

26.——Mental Suffering.—Brother or sister may, in proper case, recover damages as for mental pain and anguish against a common carrier resulting from negligence or breach of contract in carrying or delivery of a corpse.— Deavors v. Southern Express Co., Ala., 76 So. 288.

27. **Carriers of Live Stock**—Burden of Proof. —In action for damages to interstate shipment of cattle, held, where plaintiff failed to prove damage by defendant initial carrier or connecting carrier, verdict was properly directed for defendant, cattle having been shipped on another road after arrival at destination contracted for in bill of lading.—Fred Henderson & Walters v. Atlantic Coast Line Ry. Co., Ala., 76 So. 309.

28. **Carriers of Passengers**—Relation of Passenger.—A passenger after a temporary absence from train was not required to enter another car adjacent to the platform, where her own car was not so adjacent.—Sellars v. Southern Pac. Co., Cal., 166 Pac. 599.

29. **Charities**—Cemetery.—Trustees having title to land by deed for sole purpose of a general cemetery were liable to an accounting at suit of owners of certain cemetery lots and to be enjoined from applying funds to other purposes.—Seitzinger v. Becker, Pa., 101 Atl. 650.

30. **Commerce**—Intoxicating Liquor.—Laws 1915, p. 2, § 20, making it unlawful to transport or receive intoxicating liquors unless marked as required, is not violative of the commerce clause of Federal Constitution.—State v. Owen, Wash., 166 Pac. 793.

31.——Mental Suffering.—In action for damages for negligence in carrying or delivering corpse of plaintiff's brother, held, damages were consequence of breach of contract for interstate shipment governed by federal laws, and plaintiff, having failed to show damage other than mental anguish, could not recover.—Deavors v. Southern Express Co., Ala., 76 So. 288.

32. **Constitutional Law**—Franchise.—Granting franchise is in nature of contract, protected by Federal Constitution as such, and cannot be altered or amended during its life by grantor to detriment of grantee.—Pacific Telephone & Telegraph Co. v. City of Everett, Wash., 166 Pac. 650.

33.——Question Raised.—Persons not affected by provision of an ordinance which they asserted was unconstitutional are not entitled to raise question of its constitutionality.—Hazelton v. City of Atlanta, Ga., 93 S. E. 202.

34. **Contracts**—Public Policy.—Release by baseball club of services of player under contract with it to another club in consideration of sum of money is not illegal as being opposed to public policy, or amounting to contract for involuntary servitude.—Augusta Baseball Ass'n v Thomasville Baseball Club, Ga., 93 S. E. 208.

35. **Corporations**—Contract.—Contract in corporation's name, made by its president in usual course of business, which its directors could authorize and make, or ratify, is presumed

binding on it, till shown not authorized or ratified.—Summit Silk Co. v. Fidelity Trust Company of Baltimore, Md., N. J., 101 Atl. 573.

36.——Minority Stockholders.—If minority stockholder suing in name of company would excuse failure to make demand on directors to bring suit, he should name them, show they were guilty parties or show such relationship to guilty parties as justifies conclusion of refusal to do duty, general statements that company is in control of guilty party will not suffice. —Baillie v. Columbia Gold Mining Co., Ore., 166 Pac. 965.

37.——Parties.—In suit by two corporations, claiming to own the stock of a third corporation, to restrain defendant from consummating purchase of the third corporation's property, such corporation held an indispensable party.—Virginia C. Mining, Milling & Smelting Co. v. Corrigan, U. S. C. C. A., 242 Fed. 809.

38.——Subscription to Stock.—Defendants, who subscribed for corporate stock on condition it should not be issued, etc., until person obtained patent and transferred same to company, which condition never accrued, stock certificates being made to defendants, remaining undetached, and never being delivered, they did not become de jure stockholders.—Seubert v. Scott, S. D., 164 N. W. 75.

39.——Trust Fund.—Where complainant is creditor of two of merging corporations with prior lien as to some assets which went into merged corporation, he is creditor of latter within Code 1907, § 3509, making assets of insolvent corporations constitute trust fund for payment of creditors.—Alabama, T. & N. Ry. v. Tolman, Ala., 76 So. 381.

40. **Damages**—Measure of.—Measure of damages for breach of contract to lend money is not restricted to nominal damages, and where it must have been apparent that special damages would result from failure, such damages are recoverable.—Murphy v. Hanna, 164 N. W. 32.

41. **Depositions**—Waiver of Notice.—Acknowledgment of service of notice of taking deposition, waiving issue of dedimus and exceptions as to time, etc., does not authorize taking of depositions in suit not filed, nor in suit filed in different place than one mentioned in notice, nor confer validity on void subpoena issued before waiver.—Burnett v. Prince, Mo., 197 S. W. 241.

42. **Disorderly Conduct** — Evidence. — When persons attending appointed lawful meeting of any description conduct themselves in manner lawful in itself, but at variance with purpose of gathering and inconsistent with its orderly procedure, it will ordinarily be for jury to say whether their conduct was such as amounted, in the circumstances, to a disturbance of the peace. —State v. Mancini, Vt., 101 Atl. 581.

43. **Divorce**—Cruelty.—Unconcealed aversion is a "cruelty," within Rem. Code 1915, § 982, declaring cruel treatment ground for divorce.—Sabot v. Sabot, Wash., 166 Pac. 624.

44.—Evidence.—In divorce suit for denial of sexual intercourse, that husband had on several occasions driven female employe from her home to his studio, there being no charge of misconduct, held not to deprive him of right to complain.—Nordlund v. Nordlund, Wash., 166 Pac. 795.

45.——Indignity.—Indifference is an "indignity" within Rem. Code 1915, § 982, declaring personal indignities rendering life burdensome ground for divorce—Sabot v. Sabot, Wash., 166 Pac. 624.

46. **Domicile**—Change of—The domicile of origin is presumed to continue until a new one is acquired, and the intent to change the domicile must be established, especially where such change is to a foreign country.—In re James' Will, N. Y., 116 N. E. 1010, 221 N. Y. 242.

47. **Easements**—Right of Way.—Where testator, owning two adjoining lots, with driveway across both, devised to plaintiff's lot then occupied by them, with right of way across other, then occupied by himself, so long as either one should live and occupy premises, plaintiffs could use driveway so long as they occupied any part of that lot.—Estabrooks v. Estabrooks, Vt., 101 Atl. 584.

48. **Electricity**—Estoppel.—That light, heat, and power corporation used streets for several years and expended several millions of dollars on its plant did not create a franchise by estoppel.—People ex rel. Clements v. Williams, N. Y., 166 N. Y. S. 560.

49. **Embezzlement**—Evidence.—Where minority stockholder in mining company learned individual in control of company had misappropriated company's funds, and so withdrew funds company then had on deposit in a bank, took certificates of deposit, and turned them over to registry of court, notifying controlling individual, he was not guilty of embezzlement.—Baillie v. Columbia Gold Mining Co., Ore., 166 Pac. 965.

50. **Eminent Domain**—Compensation.—In assessing compensation for property taken for a public use, the effect of the public project for which the property is acquired on the value of property must be disregarded.—Bonaparte v. City of Baltimore, Md., 101 Atl. 594.

51.——Franchise.—That at time of appropriation by state, claimant's title in nature of franchise had become subject to forfeiture might be claimed as an element in fixing market value in appropriation proceedings.—First Const. Co. of Brooklyn v. State, N. Y., 116 N. E. 1020, 221 N. Y. 295.

52. **Estoppel**—Equitable Title.—One cannot, after unsuccessfully maintaining suit to enjoin ejectment on the ground of an equitable title only, assert in the ejectment action title by adverse possession at date of bill.—Harrison v. Harrison, Ala., 76 So. 295.

53. **Fixtures**—Chattel.—A house erected by widow with her own means on land of deceased husband, with agreement of heirs that it shall remain hers, is a chattel, disposable as such.—Clements v. Morton, Ala., 76 So. 306.

54. **Fraud**—Misrepresentation.—One induced to purchase land by vendor's fraudulent representations and afterwards dispossessed for alleged breach of contract has no election of remedies, and can only bring action for damages.—Eyers v. Burbank Co., Wash., 166 Pac. 656.

55. **Fraudulent Conveyances**—Change of Possession.—Where a lessee transferred to his sons the right to crop land, and they continued in actual and exclusive possession until after crop was harvested, there could be no change of possession within Civ. Code, § 3440, making such sales void.—Fissel v. Monroe, Cal., 166 Pac. 607.

56.——Notice of Intent.—Participation of purchaser under fraudulent conveyance in the fraud may be shown by facts sufficient to charge him with notice of debtor's fraudulent intent, and knowledge exciting a just suspicion as to the bona fides of the transaction is sufficient.—Dothan Nat. Bank v. Moore-Handley Hardware Co., Ala., 76 So. 317.

57. **Garnishment**—Judgment.—Where corporation, whose general manager was also general manager of another corporation of a somewhat similar name, was garnished, and first corporation filed no answer denying indebtedness, but by mistake the answer was filed in name of other corporation, judgment rendered against corporation garnisheed cannot, under Civ. Code 1910, § 5281, be set aside.—Georgia Mausoleum Company v. Williams, Ga., 93 S. E. 200.

58. **Husband and Wife**—Agency.—Where wife purchased county warrants through agency of husband, a county commissioner, she must have been presumed to have knowledge that under Rev. Codes, §§ 258, 260, county treasurer had no authority to pay them.—Libby v. Pelham, Idaho, 166 Pac. 575.

59. **Injunction**—Erection of Building.—In suit to restrain erection of alleged fire hazard buildings in close proximity to plaintiff's buildings, where plaintiff admitted that if constructed at given distance his hazard would not be increased, he was in no position to complain of denial of injunction which sought still greater removal of buildings.—Gray v. S. T. Woodring Lumber Co., Tex., 197 S. W. 231.

60.——Labor Union.—Picketing a restaurant as unfair to union labor, where purpose was to intimidate persons from patronizing it, union having called strike because proprietor refused to dismiss cook in arrears as to union dues, will be enjoined.—St. Germain v. Bakery and Confectionery Workers' Union, No. 9, of Seattle, Wash., 166 Pac. 665.

61. **Insurance** — Accident. — Where plaintiffs, suing on accident policy, proved insured's death was caused by external and violent means, to overcome this prima facie case by the defense that insured was killed in course of assault upon another, insurer must show that felonious assault was first made by insured upon other, and that he met death at hands of assaulted person in self-defense.—Georgia Casualty Co. v. Shaw, Tex., 197 S. W. 316.

62.——Cancellation.—Letter from insured to insurer, stating that he wished policy canceled at once, held a sufficient notice of cancellation, within Insurance Law, § 122.—Gately-Haire Co. v. Niagara Fire Ins. Co. of City of New York, N. Y., 116 N. E. 1015, 221 N. Y. 162.

63.——Misrepresentation. — Misrepresentations by applicant for insurance that he was in good health, had never had any disease of the lungs, and had not been treated by a physician for 12 years, held material.—Metropolitan Life Ins. Co. v. Jennings, Md., 101 Atl. 608.

64.——Renewal.—Under accident policy providing for renewal, where renewal premium was not paid on 1st day of month when due but was tendered 7th day of month, policy was not in force on 4th, the day of accident.—National Life & Accident Ins. Co. v. Reams, Tex., 197 S. W. 332.

65. **Intoxicating Liquors**—Duress.—In action to recover money paid defendant county for dramshop license involuntarily under protest, complaint was insufficient where it failed to allege that fee paid was illegal.—Neumer v. Jackson County, Mo., 197 S. W. 139.

66.——Evidence.—Despite Pen. Code 1910, § 19, held, that accused might be convicted of an attempt to manufacture spirituous liquors in violation of prohibitory law, though liquors already made were discovered at still.—Leverett v. State, Ga., 93 S. E. 232.

67.——Evidence.—In a prosecution for having possession of more intoxicating liquors than allowed by statute, evidence that in the room in which liquors were found there was a push button connected with store where people were seen apparently drinking held admissible.—Littleton v. State, Ga., 93 S. E. 230.

68.——Nuisance.—Under Laws 1915, p. 150, providing for one complaint and warrant upon which are based distinct proceedings for maintaining nuisance and a proceeding in rem against seized liquors, the court cannot order seized liquors returned to defendant upon his acquittal on nuisance charge.—State v. Hoffman, Ore., 166 Pac. 765.

69. **Landlord and Tenant**—Damages.—Where lessee's assignee had possession of personalty connected with leased premises and same was lost, value of property at inception of lease was relevant in fixing damage which was value of property when lost.—First Nat. Bank of Albany v. Klock Produce Co., Ore., 166 Pac. 955.

70. **Libel and Slander**—Libelous Publication.—Newspaper publication, that all punishments in state penitentiary were inflicted under direction of deputy warden, who had been connected with prison for several years, and who had reputation of being most cordially hated man in Missouri, held not libelous.—Gilvin v. Star-Chronicle Pub. Co., Mo., 197 S. W. 125.

71. **Mandamus**—Abuse of Discretion.—After decree, for support of wife and children and appointment of receiver, motion for his discharge, so that husband could convey his property, was directed to discretion of court, and cannot be interfered with by mandamus, in absence of abuse.—Fairbank v. Superior Court of San Joaquin County, Cal., 166 Pac. 864.

72. **Master and Servant**—Negligence.—In an action by railroad employe, brought under the federal Employers' Liability Act, there is no presumption of negligence on the part of the railroad company.—Louisville & N. R. Co. v. Coatney, Ga., 93 S. E. 288.

73.——Workmen's Compensation Act.—Workmen's Compensation Act, § 15 (1), (2), as amended in 1915, permitting the allowance of burial expenses in addition to death benefit on partial dependency, but in cases of total dependency not allowing the funeral expenses in addition to death benefit, is not invalid by reason of such discrimination.—Northern Redwood Lumber Co. v. Industrial Accident Commission, Cal., 166 Pac. 828.

74. **Mines and Minerals**—Evidence.—Where lessee of quarries knew refuse had accumulated when lease was made, and removal of refuse was neecssary properly to operate the quarries, lessee assumed burden to remove original refuse when it covenanted to remove similar refuse from its own operations.—East Sioux Falls Quarry Co. v. Wisconsin Granite Co., S. D., 164 N. W. 77.

75. **Municipal Corporations**—Addition to City.—Where addition to city of second class was platted into parcels nearly 1,300 feet long and

400 feet wide, it must, for purpose of paving assessments, be regarded as platted land, and such parcels, being surrounded by streets, constitute a block, though larger than other blocks. —Larson v. City of Ottawa, Kan., 166 Pac. 565.

76. **Negligence**—Employers' Liability Act.—The word "negligence," not being defined in federal Employers' Liability Act, must be taken to mean such act of commission or omission as would at common law have been sufficient to entitle action thereunder to be submitted to jury. —Western Maryland Ry. Co. v. Sanner, Md., 101 Atl. 587.

77. **Partnership**—Accounting.—One partner in agreement involving single transaction may maintain action against his co-partner for his share of profits, or to recover his pro rata share of losses, without necessity of formal accounting.—Reiser v. Johnston, Okla., 166 Pac. 723.

78. **Perpetuities**—Postponed Enjoyment.—If interest or right of future enjoyment of estate has vested within 21 years after life in being at time of creation of interest, postponement of actual possession or enjoyment is immaterial. —Deacon v. St. Louis Union Trust Co., Mo., 197 S. W. 261.

79. **Principal and Agent**—Scope of Agency.—Agent authorized to deliver deed to land and receive consideration is not authorized to contract for conveyance of consideration to him or to treat the money or property received as his own.—Haliam v. Bailey, Okla., 166 Pac. 874.

80.——Special Agent.—Where a limited agency contract for sale of automobiles provided that the principal would not be bound by requisitions, but would do its best to fill them, and the agent made a requisition "under our limited agency contract," failure of the principal to ship the automobiles did not render it liable to the agent. —Killker v. Ford Motor Co., S. D., 164 N. W. 57.

81. **Prohibition**—Estoppel.—Where relator made no objection to jurisdiction of Court of Appeals to which judgment in his favor was appealed, he is not, on theory that such court was without jurisdiction, entitled to writ of prohibition restraining enforcement of judgment of such court.—State v. Houck, Ohio, 116 N. E. 1009.

82. **Railroads**—Contributory Negligence.—Where plaintiff's decedent, had he stopped 20 feet from track, would have had unobstructed view in direction of approaching train, but proceeded to cross and was struck, he was guilty of contributory negligence, justifying a nonsuit.—Hanigan v. Philadelphia & R. R. Co., Pa., 101 Atl. 640.

83.——Right of Way.—In action for setting fires, based on negligent keeping of right-of-way, it was proper to admit testimony of other fires on right-of-way at other times, as tending to show knowledge of condition and negligent tolerance of it.—Slaton v. Chicago, M. & St. P. Ry. Co., Wash., 166 Pac. 644.

84. **Replevin**—Undivided Interest.—Replevin will lie to recover undivided interest in specified article of personalty if property sought to be recovered is part of larger mass of same nature and quality.—Halsey v. Simmons, Ore., 166 Pac. 944.

85. **Sales**—Bill of Lading.—Where contract for sale of lumber provided that terms were 80 per cent of price on receipt of bill of lading and invoice, balance to be paid when buyer received returns from customers, seller had no right to draw on buyer with invoice and bill of lading attached.—Webster v. Goolsby, Ark., 197 S. W. 286.

86.——Fraudulent Representations.—In action for unpaid installments on piano, where defendant admitted reading and signing contract of conditional sale, with knowledge of its terms, an answer alleging that she was induced to sign it by false and fraudulent representations was no defense.—George J. Birkel Co. v. Lovell, Cal., 166 Pac. 594.

87. **Telegraphs and Telephones**—Interstate Commerce.—An agreement, entered into between a telegraph company and a railroad company before enactment of Interstate Commerce Act, § 1, for transmission of messages by telegraph company and for transmission of materials, etc., by railroad company, held valid, despite amendment by Act June 18, 1910, § 7, extending such act to telegraph companies.—Baltimore & O. R. Co. v. Western Union Telegraph Co., U. S. C. C. A., 242 Fed. 914.

88. **Usury**—Bonus.—Although illegal bonus was paid to another, if it was paid pursuant to terms of contract, with knowledge of mortgagee, mortgage will be declared usurious.—Ahrens v. Kelly, N. J., 101 Atl. 571.

89. **Vendor and Purchaser**—Evidence.—Claim of company for restitution of price for land on theory that title purchased from a trustee had failed held without law or equity where company purchased deeds from both sides of controversy involving title with knowledge of facts.—Priest v. Capitian, Mo., 197 S. W. 83.

90.——Marketable Title.—No one is bound to assume and hunt for wrong in acts of those who have dealt in title to land he is buying, when that title is fair on its face, in order to secure himself rights of bona fide purchaser.—United States v. Beaman, U. S. C. C. A., 242 Fed. 876.

91. **War**—Alien Enemies.—A corporation created by an American state cannot be excluded from the courts, though most of its stockholders are alien enemies living in Germany, so long as it has a legal existence and officers or agents authorized to do business or bring actions.—Fritz Schulz, Jr., Co. v. Raimes & Co., N. Y., 166 N. Y. S. 567.

92. **Water and Water Courses**—Surface Water. —The common-law rule that one has right to embank against surface water flowing on his land from adjoining land, is the law in Missouri. —Goll v. Chicago & A. Ry. Co., Mo., 197 S. W. 244.

93. **Wills**—Construction.—Where there is an irreconcilable conflict between two clauses of a will, the latter will ordinarily prevail, as being the latest expression of testator's intention.—Gurley v. Bushnell, Ala., 76 So. 324.

94.——Deed.—Delivery of deed to the grantor's agent to be delivered to grantee on grantor's death is not valid "testamentary disposition" of the land, in view of Rem. Code 1915, § 1320, prescribing manner of making wills.—Rhines v. Young, Wash., 166 Pac. 642.

95.——Life Estate.—Under will giving life estate in land to wife and providing that after her death it should go to his children "or the survivors of them living at that time," testator predeceasing wife, held, children only who survive wife were entitled to land.—In re Blodgett's Estate, Mich., 163 N. W. 907.

96.——Tenancy in Common.—Where will gave property to trustee to vest in equal parts in such children as should survive testator and reach the age of 30 years, when a child shall become 30 years his contingent interest will then become a vested estate in possession, and he will be a tenant in common with trustee equally entitled to possession.—In re Rawitzer's Estate, Cal., 166 Pac. 581.

97.——Trust Estate.—Under will creating trust and directing that property be divided at expiration of 30 years, with provision for survivorship, held, estates vested in children at time of testatrix's death; possession of corpus only being postponed.—Deacon v. St. Louis Union Trust Co., Mo., 197 S. W. 261.

98.——Testamentary Capacity.—If testator could recollect property to be bequeathed, persons to whom he wished to bequeath, and manner in which he wished to dispose of property, he was competent to make will.—West v. Arrington, Ala., 76 So. 352.

99.——Burden of Proof.—Under Code 1907, §§ 6207, 6209, 6196, etc., where contestees had introduced original will and depositions of attesting witnesses, burden of establishing mental incapacity was on contestant.—West v. Arrington, Ala., 72 So. 352.

100.——Pleading and Practice.—Answer is unnecessary, but demurrer is available, in suit to revoke probate of will and have a later will admitted to probate, where the bill shows the first will was on a contract for valuable consideration.—Walker v. Yarbrough, Ala., 76 So. 390.